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5                   UNITED STATES DISTRICT COURT  
6                   WESTERN DISTRICT OF WASHINGTON  
7                   AT TACOMA

8                   US BANK NATIONAL ASSOCIATION,  
9                   et al.,

10                  Plaintiffs,

11                  v.

12                  JEFFREY K. WOODS, et al.,

13                  Defendants.

CASE NO. C11-5976BHS

ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT

14                  This matter comes before the Court on Plaintiffs and Counter Defendants US Bank  
15                  National Association as Trustee for Citigroup Mortage Loan Trust, Inc. 2007-AHL1,  
16                  Asset-Backed Pass-Through Certificates Series 2007-AHL1 ("US Bank") and America's  
17                  Servicing Company a/k/a Wells Fargo Home Mortgage a/k/a ASC's ("Wells Fargo")  
18                  (collectively "Lenders") motion for summary judgment of Defendants and Counter  
19                  Claimants Jeffrey K. Woods and Emily P. Woods's ("Emily Woods") (collectively  
20                  "Borrowers") counterclaims. Dkt. 24. The Court has considered the pleadings filed in  
21  
22

1 support of and in opposition to the motion and the remainder of the file and hereby grants  
2 the motion for the reasons stated herein.

3

## **I. PROCEDURAL HISTORY**

4 On December 16, 2011, Lenders filed a complaint for unlawful detainer against  
5 Borrowers in Kitsap County Superior Court. Dkt. 7 at 7-11. On November 29, 2011,  
6 Borrowers removed the action to this Court (Dkt. 1) and filed an answer to the complaint,  
7 alleging the following counterclaims against Lenders: (1) breach of the Deed of Trust  
8 Act; (2) breach of third party contract; (3) breach of contract; (4) equitable estoppel; (5)  
9 violation of the Washington Consumer Protection Act; (6) promissory estoppel; and (7)  
10 quiet title (Dkt. 2 at 11-18).

11 On March 9, 2012, Lenders filed a motion for summary judgment seeking  
12 dismissal of all of Borrowers' counterclaims alleged against them. Dkt. 24. On March  
13 15, 2012, Northwest Trustee Services, Inc. ("NWTS") filed a motion joining Lenders'  
14 motion for summary judgment. Dkt. 28.<sup>1</sup> On April 19, 2012, Borrowers filed an  
15 untimely response to the motion for summary judgment (Dkt. 30) and on April 20, 2012,  
16 Lenders replied (Dkt. 31). On April 20, 2012, Borrowers filed a motion for relief from  
17 deadline asking the Court to consider their response to the motion for summary judgment  
18 despite the fact that the response was filed three days late. Dkt. 32. The Court notes that  
19 Borrowers' motion for relief from deadline is granted to the extent that the Court has  
20 considered their untimely response in deciding Lenders' motion for summary judgment.

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22 <sup>1</sup> The Court includes NWTS when referring to "Lenders."

1                   **II. FACTUAL BACKGROUND**

2                   This is an action arising out of a foreclosure and sale by Lenders of property  
3 located at 4363 Southeast Nelson Road, Olalla, WA 98359, formerly owned and  
4 currently occupied by Borrowers. *See* Dkts. 26 & 30-1.

5                   On August 31, 2006, Borrowers took out a loan from Accredited Home Lenders,  
6 Inc. (“Accredited”) in the amount of \$460,700.00, which was secured by a Deed of Trust  
7 (“DOT”) against the property. On July 31, 2008, NWTS mailed a notice of default to the  
8 property address and on August 1, 2008, posted a copy of the notice of default at the  
9 property. Dkt. 26-1 at 22-24, 30-32, & 34. Borrowers maintain that they never received  
10 a copy of the notice of default. Dkt. 30-1 at 2.

11                  Foreclosure proceedings were initiated on the property in October of 2008, but  
12 were ultimately discontinued. Dkt. 26-1 at 99 & 101. On April 22, 2010, NWTS  
13 recorded a notice of sale, scheduling the foreclosure sale of the property for July 23, 2010  
14 (*id.* at 112), mailed the notice of sale via first class mail and certified mail–return receipt  
15 requested (*id.* at 103-110) and posted the notice of sale at the property (*id.* at 117).  
16 Borrowers maintain that they never received the April 22, 2010, notice of sale. Dkt. 30-1  
17 at 2.

18                  The trustee’s sale was postponed three times and each time it was postponed, a  
19 notice of the postponement was mailed to Borrowers at the property address. Dkt. 26-1  
20 at 127-29, 133-35, & 140-41. Borrowers maintain that they never received the notices of  
21 postponement. Dkt. 30-1 at 2.

1 On November 19, 2010, US Bank purchased the property at the trustee's sale for  
2 \$400,000 and the Trustee's Deed was recorded on December 1, 2010. Dkt. 26-1 at 143-  
3 44.

4 **III. DISCUSSION**

5 **A. Summary Judgment Standard**

6 Summary judgment is proper only if the pleadings, the discovery and disclosure  
7 materials on file, and any affidavits show that there is no genuine issue as to any material  
8 fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).  
9 The moving party is entitled to judgment as a matter of law when the nonmoving party  
10 fails to make a sufficient showing on an essential element of a claim in the case on which  
11 the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317,  
12 323 (1986). There is no genuine issue of fact for trial where the record, taken as a whole,  
13 could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec.*  
14 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must  
15 present specific, significant probative evidence, not simply "some metaphysical doubt").  
16 See also Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists  
17 if there is sufficient evidence supporting the claimed factual dispute, requiring a judge or  
18 jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477  
19 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d  
20 626, 630 (9th Cir. 1987).

21 The determination of the existence of a material fact is often a close question. The  
22 Court must consider the substantive evidentiary burden that the nonmoving party must

1 meet at trial – e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477  
2 U.S. at 254; *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. The Court must resolve any factual  
3 issues of controversy in favor of the nonmoving party only when the facts specifically  
4 attested by that party contradict facts specifically attested by the moving party. The  
5 nonmoving party may not merely state that it will discredit the moving party’s evidence  
6 at trial, in the hopes that evidence can be developed at trial to support the claim. *T.W.*  
7 *Elec. Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson*, 477 U.S. at 255). Conclusory,  
8 nonspecific statements in affidavits are not sufficient, and missing facts will not be  
9 presumed. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888-89 (1990).

10 **B. Lenders’ Motion for Summary Judgment**

11 Lenders’ motion seeks summary judgment of Borrowers’ counterclaims based on  
12 the application of the waiver doctrine and, to the extent the waiver doctrine does not  
13 apply, that Borrowers’ counterclaims fail as a matter of law. Dkt. 24.

14 **1. The Role of MERS**

15 As an initial matter, the Court concludes that it will not stay this case, or continue  
16 Borrowers’ motion, based on the certification of questions to the Washington Supreme  
17 Court by a court in this district regarding the role of MERS in the foreclosure process as  
18 MERS is not a party to this action. Accordingly, to the extent Borrowers are making a  
19 motion for such a stay or continuance, the motion is denied.

20 **2. The Waiver Doctrine**

21 The Washington Supreme Court’s overview of the Deed of Trust Act and adoption  
22 of the waiver doctrine is instructive:

Three goals of the Washington deed of trust act are: (1) that the nonjudicial foreclosure process should be efficient and inexpensive; (2) that the process should result in interested parties having an adequate opportunity to prevent wrongful foreclosure; and (3) that the process should promote stability of land titles. *Cox v. Helenius*, 103 Wash.2d 383, 387 (1985); *Country Express Stores, Inc. v. Sims*, 87 Wn. App. 741, 747-48 (1997); Joseph L. Hoffmann, Comment, Court Actions Contesting The Nonjudicial Foreclosure of Deeds of Trust in Washington, 59 Wash. L.Rev.. 323, 330 (1984). The act includes a specific procedure for stopping a trustee's sale so that an action contesting default can take place. RCW 61.24.130(1) provides that junior lien holders may move "to restrain" a trustee's sale "on any proper ground." However, a court cannot grant a "restraining order or injunction to restrain a trustee's sale" unless the person seeking the order has provided five days' notice to the trustee of the attempt to seek the order and has paid amounts due on the obligation secured by the deed of trust. RCW 61.24.130(1), (2). This statutory procedure is "the only means by which a grantor may preclude a sale once foreclosure has begun with receipt of the notice of sale and foreclosure." *Cox*, 103 Wash.2d at 388. Under RCW 61.24.040, and the form it mandates for a notice of trustee's sale, recipients are advised that "[a]nyone having any objection to the sale on any grounds whatsoever will be afforded an opportunity to be heard as to those objections if they bring a lawsuit to restrain the sale pursuant to RCW 61.24.130. Failure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the Trustee's sale. RCW 61.24.040(1)(f)(IX)." This statute also includes the form for the notice of foreclosure. That form must explain the right to contest the default by bringing a court action and must advise that a court may grant a restraining order or injunction to restrain a trustee's sale if the five days' notice and payment requirements are satisfied. RCW 61.24.040(2).

\* \* \*

The failure to take advantage of the presale remedies under the deed of trust act may result in waiver of the right to object to the sale, as RCW 61.24.040(1)(f)(IX) provides. The Court of Appeals has found waiver in a number of cases involving failure to enjoin the trustee's sale. Specifically, that court has held that waiver of any postsale contest occurs where a party (1) received notice of the right to enjoin the sale, (2) had actual or constructive knowledge of a defense to foreclosure prior to the sale, and (3) failed to bring an action to obtain a court order enjoining the sale. *Country Express Stores, Inc.*, 87 Wn.App. at 749-51; *Steward v. Good*, 51 Wn. App. 509, 515-17 (1988); *Koegel v. Prudential Mut. Sav. Bank*, 51 Wn. App. 108, 114 (1988); *Peoples Nat'l Bank of Wash. v. Ostrander*, 6 Wn. App. 28, (1971); see Hoffmann, 59 Wash. L.Rev. at 335. The waiver doctrine

1 applied in this context serves all three goals of the deed of trust act.  
2 Adequate remedies to prevent wrongful foreclosure exist in the presale  
3 remedies, and finding waiver in these circumstances furthers the goals of  
4 providing an efficient and inexpensive foreclosure process and promoting  
5 the stability of land titles. *Country Express Stores, Inc.*, 87 Wn. App. at  
6 752; see *Ostrander*, 6 Wn. App. at 32 (“[t]o allow one to delay asserting a  
7 defense [until after the sale] would be to defeat the spirit and intent of the  
8 trust deed act”).  
9 \* \* \*

10 The waiver doctrine is also consistent with the scheme of the act  
11 itself: “The Deed of Trust Act discourages the use of postsale remedies in  
12 three ways. First, the Act does not expressly provide for any court actions  
13 to contest a completed trustee’s sale. Second, the Act indicates that the right  
14 to contest a completed sale may be waived by a party’s failure to bring a  
15 presale injunction action. Finally, the Act requires that the trustee’s deed  
16 issued to the purchaser “recite the facts showing that the sale was  
17 conducted in compliance with all of the requirements” of the Act and the  
18 particular deed of trust. This recital of statutory compliance is “prima facie  
19 evidence of such compliance and conclusive evidence thereof in favor of  
20 bona fide purchasers and encumbrancers for value.” [RCW 61.24.040(7).]”  
21 Hoffmann, 59 Wash. L.Rev. at 329 (footnotes omitted).

22 We agree that the waiver rule applied by the Court of Appeals in  
23 *Country Express Stores, Steward, Koegel* and like cases appropriately  
24 effectuates the statutory directive that any objection to the trustee’s sale is  
25 waived where presale remedies are not pursued. See RCW  
26 61.24.040(1)(f)(IX).

27 *Plein v. Lackey*, 149 Wn. 2d 214, 225-29 (2003) (footnotes omitted). However, under  
28 RCW § 61.24.127(1)(a)-(c), claims for fraud, violations of the Consumer Protection Act,  
29 and failure by the trustee to materially comply with the DTA are preserved even after the  
30 foreclosure sale has occurred. However, the statute specifically states that a borrower  
31 bringing post-sale claims, “may not seek any remedy at law or in equity other than  
32 monetary damages;” and “may not operate in any way to encumber or cloud the title to  
33 the property that was subject to the foreclosure sale . . . .” RCW § 61.24.127(b), (e).  
34

1       Here, in their motion for summary judgment, Lenders argue that Borrowers'  
2 claims for breach of the Deed of Trust Act, breach of third party contract, breach of  
3 contract, equitable estoppel, promissory estoppel, and quiet title should be dismissed with  
4 prejudice under the waiver doctrine as Borrowers brought these claims after the  
5 foreclosure sale took place. Dkt. 24. Borrowers maintain that waiver does not apply  
6 because they have demonstrated that "they never received notice of trustee sale informing  
7 them of their right to enjoin sale pursuant to RCW [§] 64.24 et seq." Dkt. 30 at 13.

8       In order for the waiver doctrine to apply, the borrower must have: "(1) received  
9 notice of the right to enjoin the sale, (2) had actual or constructive knowledge of a  
10 defense to foreclosure prior to the sale, and (3) failed to bring an action to obtain a court  
11 order enjoining the sale." *Brown v. Household Realty Corp.*, 146 Wn. App. 157, 163  
12 (2008) (citing *Plein*, 149 Wn. 2d at 227-29). In her declaration<sup>2</sup>, Emily Woods states that  
13 "I did not receive the Notice of Default as required under RCW [§] 61.24.030." Dkt. 30-  
14 1 at 2. In addition, she declares:

15           The Trustee states that on April 22, 2010 the sale was restated, again  
16 I did not receive this notice. The Trustee also states that excessive  
17 postponements occurred between July 31, 2008 until the actual sale on  
18 November 19, 2010.

19  
20  
21           I have reviewed my records and I did not receive the second notice  
22 alleged by NTSI of April 22, 20[10] Notice of Default or the signed  
declaration of foreclosure loss mitigation as required by law.

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21           <sup>2</sup> The Court notes that while the declaration of Emily Woods is also signed by Jeffrey  
22 Woods, the facts contained in the declaration were only sworn to by Emily Woods and therefore  
are only considered to be her testimony and not that of Jeffrey Woods.

1   | *Id.* Lenders maintain that they followed all proper procedures under the DTA regarding  
2 the foreclosure process and filed sworn declarations showing the mailing, posting,  
3 publication, and proclamation of such notices. Dkt. 31; *see* Dkt. 26. In addition, Lenders  
4 filed proof that the April 22, 2010 notice of sale was recorded with the Kitsap County  
5 Auditor (Dkt. 26-1 at 144) giving Borrowers, at the very least, constructive notice. Dkt.  
6 31.

7         The Court concludes that Emily Woods's self-serving statements in her  
8 declaration that she "reviewed her records" and "did not receive the notice" is insufficient  
9 to defeat Lenders' motion where Lenders have submitted evidence to show that they  
10 complied with all notice requirements under the DTA. Thus, Lenders have shown that  
11 the three elements of the waiver doctrine have been met: (1) Borrowers received notice of  
12 the right to enjoin the sale as Lenders provided evidence that the proper notices were  
13 mailed, posted, published and recorded; (2) Borrowers had actual or constructive  
14 knowledge of a defense to foreclosure prior to the sale as there are no claims based on  
15 events that occurred after the sale; and (3) it is undisputed that Borrowers failed to bring  
16 an action to obtain a court order enjoining the sale. Accordingly, the Court concludes  
17 that Lenders have shown that the waiver doctrine applies and Borrowers' claims for  
18 breach of the Deed of Trust Act, breach of third party contract, breach of contract,  
19 equitable estoppel, promissory estoppel, and quiet title must be dismissed. Although the  
20 Court views Borrowers' allegations regarding their DTA claims to allege non-material  
21 violations, in an abundance of caution, the Court will analyze such claims separately and  
22

1 apart from the waiver doctrine in the event Borrowers were attempting to assert DTA  
2 claims involving material violations.

3       **3.      Borrowers' DTA Claims**

4       Borrowers' counterclaims allege that Lenders violated the DTA in the following  
5 ways:

6           (A)     The strict statutory prescription of the chain of ownership of  
7 [Borrowers'] loan and who can foreclose, see paragraphs 14, 15, and 17  
through 45.

8           (B)     There is the existence of actual conflict of interest if the  
trustee representative (Northwest Trustee Services, Inc.) Vonne McElliott  
is the Vice President of MERS and the Trustee simultaneously.

9           (C)     Violation of Deed of Trust Act RCW 61.24.030(7)(a) and  
RCW 61.24.030(8).

10       Dkt. 2 at 12-13. Lenders maintain that Borrowers' DTA claims fail as a matter of law.

11       **a.      Chain of Ownership and Conflict of Interest Issues**

12       Borrowers' first two allegations regarding the chain of ownership and conflict of  
13 interest are related. First, as Lenders point out in their motion for summary judgment,  
14 any allegations of violation of the DTA that rely on a "show me the note" argument are  
15 without merit. *See Freeston v. Bishop, White & Marshall, P.S.*, 2010 WL 1186276 at \*6  
16 (W.D. Wash. Mar. 24, 2010) (quoting *Diessner v. Mortgage Electronic Registration Sys.*,  
17 618 F. Supp. 2d 1184, 1187 (D. Ariz. 2009) (collecting cases)). However, Borrowers  
18 state in their response to the motion for summary judgment that they are not relying on a  
19 "show me the note" argument; rather, they allege that Vonne McElliott is an employee  
20 of NWTS and was "not employed as Vice President of Mortgage Electronic Registrations  
21 Systems, Inc." and therefore did not have the authority to transfer the note when she  
22

1 signed the Assignment of Deed of Trust to US Bank on August 1, 2008. Dkt. 30 at 5. In  
2 addition, their argument appears to be that if McElliott was in fact a vice president of  
3 MERS then there is a conflict of interest issue with her position as a vice president of  
4 NWTS, the accredited DOT trustee. *See id.* at 4-5. In support of their motion for  
5 summary judgment, Lenders have submitted evidence that an assignment of deed of trust  
6 to US Bank was signed by McElliott on August 1, 2008, as a Vice President of MERS  
7 and recorded on August 26, 2008. In addition, Lenders point out that while the DTA  
8 states that “[n]o person, corporation or association may be both trustee and beneficiary  
9 under the same deed of trust” (RCW § 61.24.020), Washington case law allows “an  
10 employee, agent or subsidiary of a beneficiary to also be a trustee.” *Cox v. Helenius*, 103  
11 Wn.2d 383, 390 (1985). While Borrowers have made statements in their response to the  
12 motion alleging conflict of interest issues and questions regarding McElliott’s position  
13 with MERS, Borrowers have failed to submit any evidence, or point the Court to any  
14 authority, to support their allegations and refute the evidence submitted by Lenders.  
15 Accordingly, Borrowers’ claims under the DTA regarding “chain of ownership” and  
16 conflict of interest must be denied.

17                   **b.       RCW §§ 61.24.030(7)(a) & 61.24.030(8)**

18                   Borrowers’ remaining claims under the DTA allege violations of RCW  
19 § 61.24.030(7)(a)&(8). RCW § 61.24.030(7)(a) requires that

20                   for residential real property, before the notice of trustee’s sale is recorded,  
21 transmitted, or served, the trustee shall have proof that the beneficiary is the  
22 owner of any promissory note or other obligation secured by the deed of  
trust. A declaration by the beneficiary made under the penalty of perjury  
stating that the beneficiary is the actual holder of the promissory note or

1 other obligation secured by the deed of trust shall be sufficient proof as  
2 required under this subsection.

3 Lenders have submitted evidence to show that NWTS is in possession of a declaration  
4 signed by Wells Fargo as “attorney in fact” for U.S. Bank. Dkt. 26-1 at 97. Borrowers  
5 have failed to submit any evidence to show how Lenders have failed to show sufficient  
6 proof that the beneficiary is the owner of the promissory note secured by the deed of  
7 trust. Accordingly, Borrowers’ claim brought under RCW § 61.24.030(7)(a) is without  
8 merit.

9 In addition, RCW § 61.24.030(8) provides, in relevant part, that

10 at least thirty days before notice of sale shall be recorded, transmitted or  
11 served, written notice of default shall be transmitted by the beneficiary or  
12 trustee to the borrower and grantor at their last known addresses by both  
13 first-class and either registered or certified mail, return receipt requested,  
14 and the beneficiary or trustee shall cause to be posted in a conspicuous  
15 place on the premises, a copy of the notice, or personally served on the  
16 borrower and grantor.

17 Here, Borrowers appear to argue that either they never received the notice of default,  
18 dated July 31, 2008, from Lenders or that such notice of default “expired” because of the  
19 multiple notices of sale that were transmitted and then postponed. *See* Dkt. 30. First, the  
20 Court concludes that, to the extent Borrowers are arguing that the notice of default  
21 somehow expired, they fail to cite case or statutory authority on which they rely in  
22 making the argument and the Court is unaware of any. In addition, as discussed above,  
Borrowers have failed to submit any evidence, with the exception of the self-serving  
statement in Emily Woods’s declaration that she did not receive the proper notices, that  
Lenders failed to comply with any requirements regarding the notices given to

1 Borrowers. Lenders have submitted evidence that the notice of default dated July 31,  
2 2008 (Dkt. 26-1 at 22-24) was mailed to Borrowers at the property address via first class  
3 mail and certified mail–return receipt requested on July 31, 2008 (*see* Dkt. 26-1 at 30-  
4 32). Also, Lenders have submitted evidence that NWTS posted a copy of the notice of  
5 default at the property on August 1, 2008. Dkt. 26-1 at 34. Accordingly, the Court  
6 concludes that Borrowers have failed to submit sufficient evidence to create a material  
7 question of fact regarding Lenders’ compliance with the notice requirements under the  
8 DTA, and Borrowers’ claim under RCW § 61.24.030(8) fails as a matter of law.

9       **4.      Borrowers’ CPA Claim**

10       To prevail on a CPA claim, a plaintiff must show: (1) an unfair or deceptive act or  
11 practice; (2) that occurs in trade or commerce; (3) a public interest; (4) injury in their  
12 business or property; and (5) a causal link between the unfair or deceptive act and the  
13 injury suffered. *See Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105  
14 Wash. 2d 778, 780 (1986). Failure to satisfy even one of the elements is fatal to a CPA  
15 claim. *Id.* at 794-95.

16       Lenders’ motion for summary judgment seeks dismissal of Borrowers’ CPA claim  
17 arguing that Lenders’ conduct complained of by Borrowers does not give rise to a CPA  
18 claim. Dkt. 24. In their complaint, Borrowers include allegations of fact in support of  
19 their CPA claim against Lenders. Dkt. 2 at 15-16. In response to Lenders’ motion  
20 seeking summary judgment of the CPA claim, Borrowers state that “[r]eading the  
21 complaint in the light most favorable to the Woods, the Woods have sufficiently pled a  
22 CPA claim.” Dkt. 30 at 15. However, Borrowers fail to submit any evidence in support

1 of their CPA claim. Accordingly, Lenders' motion seeking summary judgment on  
2 Borrowers' CPA claim must be granted and the claim dismissed. *See Estate of Tucker ex*  
3 *rel. Tucker v. Interscope Records, Inc.*, 515 F.3d 1019, 1033 n. 14 (stating that “[t]o  
4 defeat a summary judgment motion . . . the non-moving party ‘may not rest upon the  
5 mere allegations or denials’ in the pleadings . . . [rather, t]he non-moving party must  
6 establish the existence of a genuine factual dispute on the basis of admissible evidence;  
7 bare allegations without evidentiary support are insufficient to survive summary  
8 judgment”) (citing Fed. R. Civ. P. 56(e)).

9 **C. Remand**

10 Because the Court has concluded that Lenders' motion for summary judgment has  
11 merit and Borrowers' counterclaims should be dismissed, the Court has dismissed all  
12 claims over which it had original jurisdiction and the action will be remanded to the court  
13 in which it was originally filed. *See* 28 U.S.C. § 1337(c)(3) (stating that district courts  
14 may decline to exercise supplemental jurisdiction when “the district court has dismissed  
15 all claims over which it has original jurisdiction”).

16 **IV. ORDER**

17 Therefore, it is hereby **ORDERED** as follows:

18 (1) Lenders' motion for summary judgment (Dkt. 24) is **GRANTED**;

19 (2) Borrowers' counterclaims against Lenders are **DISMISSED with prejudice**;

20 and

(3) This action is **REMANDED** to the Court in which it was originally filed.

Dated this 6th day of June, 2012.

  
DENIS MULLER

BENJAMIN H. SETTLE  
United States District Judge